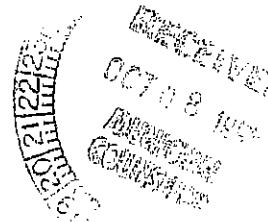


PERSONNEL SERVICES BULLETIN 98-4



TO: Department/Division Heads

FROM: Dianna L. Berry *DLB*
Personnel Director

DATE: October 6, 1998

SUBJECT: Family and Medical Leave Act of 1993

I. PURPOSE OF THE ACT

The Family and Medical Leave Act allows eligible employees to take up to twelve (12) weeks leave in a 12 month period for: medical reasons; the birth or adoption of a child; and the care of a child, spouse, or parent of the employee who has a serious health condition.

II. DEFINITIONS

- A. *Son or Daughter*: A biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either less than 18 years of age or 18 years of age or older and incapable of self-care because of a physical or mental disability.
- B. *Parent*: The biological parent of an employee or an individual who stood in loco parentis to an employee.
- C. *Spouse*: A husband or wife, or spousal equivalent, as defined under State law.
- D. *Health Care Provider*: A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or any other person determined by the Secretary of Labor to be capable of providing health care services (i.e., podiatrist, dentists, clinical psychologists, optometrists, chiropractor, nurse practitioner and nurse-midwife, and Christian Science practitioners).
- E. *Serious Health Condition*: An illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility; or continuing treatment by a health care provider.

EXHIBIT

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- F. *Intermittent Leave:* Leave taken on an intermittent (non-continuous) or reduced schedule (i.e., work half-days, work three weeks per month, etc.) when medically necessary.
- G. *Rolling 12 Month Period:* Backward 12 month measurement of FMLA usage from the date an employee uses any FMLA leave to determine the remaining 12 week leave entitlement which was not used during the immediate preceding 12 months. For example, an employee uses his/her first approved FMLA benefit hours on June 9. For the purpose of applying his/her 12 week entitlement, his/her year runs from June 9 until the following June 8. On June 9 the employee would again be eligible for 12 weeks of leave.

III. ELIGIBILITY REQUIREMENTS

- A. To be eligible for leave under the Family and Medical Leave Act, an employee must have been employed by The City of Oklahoma City for at least twelve (12) months prior to the date leave is requested, *and* worked at least 1,250 hours during the previous twelve (12) month period preceding the request for leave.
- B. An eligible employee shall be entitled to a total of twelve (12) workweeks of leave during a rolling twelve (12) month period for one or more of the following:
 - 1. The birth of a son or daughter of the employee or placement of a son or daughter with the employee for adoption or foster care, in order to care for such son or daughter;
 - a. The entitlement to leave for the birth or placement of a son or daughter shall expire at the end of the twelve (12) month period beginning on the date of such birth or placement.
 - b. If both spouses work for The City of Oklahoma City, the aggregate leave to which they are entitled is twelve (12) weeks. However, time may be split in any manner chosen by the spouses.
 - c. Intermittent or reduced leave may be taken only with the agreement of the supervisor. Leave taken on an intermittent or reduced schedule shall not result in a reduction in the total amount of leave to which the employee is entitled (a total of 12 work weeks).

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2. To care for the spouse, son, daughter, or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition;
 - a. If both spouses work for The City of Oklahoma City, *each* is entitled to twelve (12) weeks to care for a sick son or daughter. If one spouse is ill and must be cared for by the other, *each* spouse is entitled to twelve (12) weeks.
3. A serious health condition that renders the employee unable to perform the functions of the position;
 - a. An on-the-job injury qualifies as a serious health condition under FMLA. The workers' compensation absence and FMLA leave shall run concurrently subject to proper notice and designation by the department.
 - b. If medically necessary, intermittent leave or a reduced schedule may be taken by the employee. Leave taken on an intermittent or reduced schedule shall not result in a reduction in the total amount of leave to which the employee is entitled (a total of 12 work weeks).

IV. PROCEDURES FOR REQUESTING LEAVE

- A. An employee must provide his/her supervisor with at least thirty (30) days written notice to request family/medical leave for the birth, adoption or foster care of a son or daughter, using the "**REQUEST FOR FAMILY/MEDICAL LEAVE**" form attached, if the leave is foreseeable. If leave is requested for the care of a son, daughter, spouse, or parent, or for the employee's personal medical condition, the employee must also provide certification from a health care provider, using the "**CERTIFICATION OF HEALTHCARE PROVIDER**" form attached.
- B. If the date of medical treatment is to begin in less than the thirty (30) day notification period, the employee must provide notice as soon as practicable to his/her supervisor. Leave deemed to be FMLA qualifying will be charged to the FMLA entitlement retroactive to the first day of the employee's absence.
- C. Where the need for leave is foreseeable based on planned medical treatment, the employee must make a reasonable effort to schedule the treatment so as not to unduly disrupt the operation of the department/division.

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D. An employee requesting family/medical leave may utilize his/her accrued sick leave, vacation leave, and donated sick leave prior to being placed in an unpaid leave status. However, pursuant to FMLA Federal Regulations, the department/division is not required to provide sick leave benefits in any situation in which a physician or practitioner has not certified the leave as medically necessary, or has released the employee/family member from medical care. The combined amount of paid and non-paid time off, for the purpose of calculating FMLA entitlement, shall not exceed twelve (12) weeks in a rolling twelve (12) month period.

Please note that compensatory time off is not a form of accrued paid leave that the City may require the employee to substitute for unpaid FMLA leave. The employee may request to use his/her balance of compensatory time for an FMLA reason. However, the absence which is paid from the employee's accrued compensatory time "account" may not be counted against the employee's FMLA leave entitlement.

E. All requests for leave for family and medical purposes, whether written or oral, formal or informal, must be evaluated by the supervisor/department to determine whether the leave being sought potentially qualifies as FMLA leave. This is true regardless of whether the employee mentions FMLA. If the reason for the leave appears to qualify under FMLA, the department must immediately give the employee an FMLA "REQUEST FOR FAMILY/MEDICAL LEAVE" form and a "CERTIFICATION OF HEALTHCARE PROVIDER" form to be completed and returned pursuant to Section VI. If the reason for the leave is not clear, the supervisor/department must ask the employee for clarification. If it is determined that the employee's leave qualifies under FMLA, the leave cannot be denied under any circumstance unless the employee has exhausted his/her leave entitlement for the rolling twelve (12) month period. If the employee's leave is not determined to be FMLA qualified until the employee returns to work, the supervisor/department must advise the employee within two business days of the employee's return that the leave is to be charged as FMLA leave, otherwise the leave cannot be charged against the employee's FMLA entitlement.

F. A separate request for leave must be submitted to the employee's supervisor for each purpose as defined in Section III - B of this document. Approved leave shall only apply to that single purpose.

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G. The supervisor will inform the Benefits Division in the Personnel Department when an employee will be on leave due to the employee's medical condition.

H. Certification

1. An eligible employee shall be required to provide certification from the health care provider to the supervisor, supporting the need for family and/or medical leave no later than 15 days from the date leave is requested. Certification is deemed to be sufficient if it states:

Medical Leave

- a. The date the serious health condition commenced.
- b. The probable duration of the condition which must include an estimated return to work date.
- c. The appropriate medical facts within the knowledge of the health care provider regarding the condition.
- d. The extent to which the employee is unable to perform the functions of his/her position.
- e. The dates on which planned medical treatment is expected to be given and the duration of such treatment, if intermittent leave or leave on a reduced schedule is medically necessary.
 1. If an employee requests intermittent leave or leave on a reduced schedule based on planned medical treatment, the employee may be required to temporarily transfer to an available alternative position for which the employee is qualified, to better accommodate recurring periods of leave. The employee will retain his/her current rate of pay and benefits.
- f. The City of Oklahoma City will require the employee to provide medical re-certification from a health care provider at some later date during the employee's medical leave, if the employer has reason to question the appropriateness or duration of leave. Failure to provide requested certification may result in denial of continued medical leave benefits.

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- g. The Act allows The City of Oklahoma City to obtain a second medical opinion, at the City's expense, from a physician who does not have regular employment/contracts with the City, if the City has reason to doubt the validity of the certification provided by the employee. The Personnel Department will determine the necessity of a second opinion.
 - 1. If the second opinion differs from the originally provided certification, The City of Oklahoma City may require that the employee obtain the opinion of a third health care provider, at the City's expense. The third health care provider must be approved jointly by the employee and The City of Oklahoma City.
 - 2. The opinion of the third health care provider shall be binding on both The City of Oklahoma City and the employee.

Family Leave

- h. That the eligible employee is needed to care for the employee's son, daughter, spouse, or parent, and an estimate of the amount of time needed to care for the son, daughter, spouse, or parent; for the birth of a child or placement of a child for adoption or foster care;
- i. That the employee's intermittent leave or reduced leave schedule is medically necessary for the care of a son, daughter, parent, or spouse who has a serious health condition, or will assist in their recovery, and the expected duration and schedule of the intermittent leave or reduced leave schedule.
 - 1. If an employee requests intermittent leave or leave on a reduced schedule based on a family member's planned medical treatment, the employee may be required to temporarily transfer to an available alternative position for which the employee is qualified, to better accommodate recurring periods of leave. The employee will retain his/her current rate of pay and benefits.
 - 2. The City of Oklahoma City may require the employee to provide medical re-certification from a health care provider at some later date during the employee's family leave. Failure to provide requested certification may result in denial of family leave benefits.

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V. EFFECT ON BENEFITS

- A. Vacation and sick leave shall not continue to accrue during any unpaid family and/or medical leave which exceeds two (2) payroll periods.
- B. Unpaid family and/or medical leave exceeding thirty (30) continuous days will result in an adjustment to the employee's retirement eligibility, longevity eligibility, where applicable, and salary review date. Eligibility dates will be adjusted one day for each day of absence in excess of thirty (30).
- C. An employee granted family and/or medical leave will continue to be covered under The City of Oklahoma City's group health insurance and life insurance plans during such leave, under the same conditions as coverage would have been provided if the employee had been continuously employed during the leave period. Thus, the employee will be required to continue payment of his/her share of insurance premiums during any such absence. Failure to pay the required premium may result in cancellation of the employee's coverage.

If an employee's family and medical leave expires and the employee has exhausted his/her accrued sick leave, vacation leave, and compensatory time prior to being medically acceptable to return to work (as documented by the health care provider), the employee will be required to pay any costs to continue health insurance coverage, once the employee has been in an unpaid status exceeding two (2) payroll periods.

VI. RETURN FROM FAMILY/MEDICAL LEAVE

- A. Prior to an employee's return to work, the employee will be required to provide the City with a medical release, indicating that he/she is able to perform the essential functions of his/her job with or without reasonable accommodations. The City of Oklahoma City reserves the right to obtain a second opinion, and if necessary a third opinion, at the City's expense, as outlined in Section IV-H, Certification.

If, the second or third opinion support the original release, the employee shall be compensated, in the event of unpaid FMLA, from the date of the original release. However, if *both* the second and third opinion do not support the original release, the employee shall not be compensated for time lost.

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- B. An employee returning from family and/or medical leave within the twelve (12) week FMLA period, shall be restored to the position held prior to the leave commencing; or if the previously held position is unavailable, shall be restored to an equivalent position with equivalent pay and benefits, within his/her current department or division.

VII. FAILURE TO RETURN FROM FAMILY/MEDICAL LEAVE

- A. An employee who fails to return from family and/or medical leave after the period of leave to which the employee is entitled has expired or after being medically certified to do so, shall be subject to administrative action, not to exclude termination.
- B. An employee who is medically unable to return to work after the 12 week FMLA period has expired, and is unable to perform the essential function of his/her position with reasonable accommodation, may apply for a leave of absence for an additional three (3) months through his/her department head. (See Article 1000, Section 1010 of the Personnel Policies). The employee does not have the right to restoration to his/her position after the twelve (12) weeks FMLA entitlement has expired, except where the employee's job injury leave exceeds the FMLA period. In that instance, the employee will be restored according to applicable injury leave policies. An employee whose medical leave exceeds 12 weeks will be returned to the same or similar position, only if available. If the same or similar position is not available, the employee may be terminated.
 - 1. Certification from the employee's health care provider indicating that the employee is unable to work because of the continuation, recurrence, or onset of the serious health condition, must be provided at the time the leave of absence is requested. The City of Oklahoma City reserves the right to investigate an employee's continued absence. *Note:* Continued absences due to job injuries are covered under applicable job injury policies.
 - 2. If the leave of absence is approved, the employee will be permitted to use accrued vacation/sick leave. If the employee does not have any accrued vacation/sick leave, he/she will be placed in an unpaid status.
 - a. Once the employee has been in an unpaid status for more than two (2) payroll periods, he/she will be required to pay all required premiums to continue health insurance benefits. Failure to pay the required premiums may result in cancellation of insurance benefits.

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3. If after the additional three (3) months the employee remains unable to perform the essential functions of the position he/she held at the time FMLA was granted (with or without reasonable accommodations), the employee will be subject to termination.

VIII. ADMINISTRATION

- A. Each City Department shall be responsible for administration of the Family and Medical Leave Act as it pertains to that Department's employees.
- B. The Personnel Department shall be responsible for general oversight and interpretation of the Family and Medical Leave Act; provide advice and guidance to all City Departments regarding applications of the Act; and, the coordination of all FMLA dispute resolution activities between the City and the United States Department of Labor, Wage and Hour Division.

The City of Oklahoma City

CERTIFICATION OF HEALTH CARE PROVIDER FOR FAMILY MEDICAL LEAVE

To be completed by Health Care Provider

1. Employee's Name	3. Patient's Name (if different from employee)
2. Employee's Social Security Number	

4. The attached sheet describes what is meant by a "serious health condition" under the Family and Medical Leave Act. Does the Patient's condition¹ qualify under any of the categories described? Yes No
If so, please check the applicable category.

- (1) Hospital Care
- (2) Absence Plus Treatment
- (3) Pregnancy
- (4) Chronic Conditions Requiring Treatments
- (5) Permanent/Long-term Conditions Requiring Supervision
- (6) Multiple Treatments (Non-Chronic Conditions)
- or None of the Above

5. Describe the medical facts which support your certification, including a brief statement as to how the medical facts meet the criteria of one of these categories:

6. (a) State the approximate date the condition commenced, and the probable duration of the condition (and also the probable duration of the patient's present incapacity² if different):

(b) Will it be necessary for the employee to take work only intermittently or to work on a less than full schedule as a result of the condition (including for treatment described in Item 6)? Yes No

If yes, give the probable duration:

(c) If the condition is a chronic condition (condition #4) or pregnancy, state whether the patient is presently incapacitated² and the likely duration and frequency of episodes of incapacity²:

¹ Here and elsewhere on this form, the information sought relates only to the condition for which the employee is taking FMLA leave.

² "Incapacity," for purposes of FMLA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom.

(over)

7. (a) If additional treatments will be required for the condition, provide an estimate of the probable number of such treatments:

If the patient will be absent from work or other daily activities because of treatment on an intermittent or part-time basis, also provide an estimate of the probable number and interval between such treatments, actual or estimated dates of treatment if known, and period required for recovery if any:

(b) If any of these treatments will be provided by another provider of health services (e.g., physical therapist), please state the nature of the treatments:

(c) If a regimen of continuing treatment by the patient is required under your supervision, provide a general description of such regimen (e.g., prescription drugs, physical therapy requiring special equipment):

8. (a) If medical leave is required for the employee's absences from work because of the employee's own condition (including absences due to pregnancy or a chronic condition), is the employee able to perform work of any kind? Yes No

(b) If able to perform some work, is the employee *unable* to perform one or more of the essential functions of the employee's job (the employee or the employer should supply you with the information about the essential job functions)? Yes No If yes, please list the essential functions the employee is *unable* to perform.

(c) If neither a nor b applies, is it necessary for the employee to be absent from work for treatment?
 Yes No

9. (a) If leave is required to care for a family member or the employee with a serious health condition, does the patient require assistance for basic medical or personal needs or safety, or for transportation?
 Yes No

(b) If no, would the employee's presence to provide psychological comfort be beneficial to the patient or assist in the patient's recovery? Yes No

(c) If the patient will need care only intermittently or on a part-time basis, please indicate the probable duration of this need:

Signature of Health Care Provider: _____ Type of Practice: _____

Address: _____ Phone: _____

To be completed by the employee needing family leave to care for a family member:

State the care you will provide and an estimate of the period during which you will provide, including a schedule, if leave is to be taken intermittently or if it will be necessary for you to work less than a full schedule:

Employee Signature: _____ Date: _____

The City of Oklahoma City

SERIOUS HEALTH CONDITIONS COVERED BY FMLA

Definitions

A "Serious Health Condition" means an illness, injury impairment, or physical or mental condition that involves one of the following:

1. **Hospital Care:** *Inpatient Care* (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity² or subsequent treatment in connection with or consequent to such inpatient care.
2. **Absence Plus Treatment:**
 - (a) A period of incapacity² of *more than three consecutive calendar days* (including any subsequent treatment or period of incapacity² relating to the same condition), that also involves:
 - (1) *Treatment*³ *two or more times* by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
 - (2) *Treatment* by a health care provider *on at least one occasion* which results in a *regimen of continuing treatment*⁴ under the supervision of the health care provider.
3. **Pregnancy:** Any period of incapacity² due to *pregnancy* or for *prenatal care*.
4. **Chronic Conditions Requiring Treatments:** A *chronic condition* which:
 - (1) Requires *periodic visits* for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
 - (2) Continues over an *extended period of time* (including recurring episodes of a single underlying condition); and
 - (3) May cause *episodic* rather than a continuing period of incapacity² (e.g., asthma, diabetes, epilepsy, etc.).
5. **Permanent/Long-term Conditions Requiring Supervision:** A period of *incapacity*² which is *permanent or long-term* due to a condition for which treatment may not be effective. The employee or family member must be *under the continuing supervision of, but need not be receiving active treatment by, a health care provider*. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.
6. **Multiple Treatments (Non-Chronic Conditions):** Any period of absence to receive *multiple treatments* (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for *restorative surgery* after an accident or other injury, or for a condition that *would likely result in a period of incapacity² of more than three consecutive calendar days in the absence of medical intervention or treatment*, such as cancer (chemotherapy, radiation, etc.) severe arthritis (physical therapy), kidney disease (dialysis).

³ Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

⁴ A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves, or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

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3. If after the additional three (3) months the employee remains unable to perform the essential functions of the position he/she held at the time FMLA was granted (with or without reasonable accommodations), the employee will be subject to termination.

VIII. ADMINISTRATION

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SIGNATURE



DATE

3-25-05